## APPENDIX.

No. 1555, Civil

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, NORTHERN DIVISION

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JOHEATHER MCSWAIN ET AL.
*Plaintiffs*

VS.

COUNTY BOARD OF EDUCATION OF ANDERSON COUNTY, TENNESSEE, ET AL., *Defendants*

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### Relevant Docket Entries.

8/29/56—Petition of D. J. Brittain, Jr., J. M. Burkhart, W. B. Lewallen, Sidney Davis and Walter E. Fischer
8/29/56—Temporary Restraining Order
8/30/56—Petition for Contempt
8/30/56—Affidavit of James Loggans
8/30/56—Order for Attachment
8/30/56—Order of hearing on Petition for Injunction, Temporary Restraining Order and Order to Show Cause
8/31/56—Judgment: John Kasper Sentence
9/ 6/56—Temporary Restraining Order
~~9/ 6/56—Motion for New Trial~~
9/ 6/56—Original of Court Reporter's transcript of Opinion of Court on Temporary Restraining Order, and Order to Show Cause, issued August 29, 1956
9/ 6/56—Order of Hearing of September 6, 1956
9/ 7/56—Notice of Appeal
10/ 8/56—Consent Order extending time for filing Record on Appeal
10/25/56—Court Reporter's transcript of Opinion of Court of September 6, 1956

11/ 2/56—Original of Transcript of Testimony—Motion for Preliminary Injunction, Motion to Show cause for Contempt, and Permanent Injunction—August 30, 31, and September 6, 1956

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(Filed August 29, 1956)

**Petition**

The petitioners are D. J. Brittain, Jr., Principal of Clinton High School, Anderson County, Tennessee, J. M. Burkhart, Member of the County Board of Education of Anderson County, Tennessee, W. B. Lewallen, Sidney Davis, and Walter E. Fischer, all citizens and residents of Anderson County, Tennessee, all of whom respectfully show to the Court:

I

That D. J. Brittain, Jr., was the principal of Clinton High School in Anderson County, Tennessee, when the cause in which this petition is filed was first begun, and that he still remains and is at the present time the principal of Clinton High School, Anderson County, Tennessee, and was and is a party defendant in Cause No. 1555 in the United States District Court for the Eastern District of Tennessee, Northern Division. That J. M. Burkhart was a member of the County Board of Education of Anderson County, Tennessee, when the cause in which this petition is being filed was begun, and that he is still a member of the County School Board of Anderson County, Tennessee, and was and is a defendant in Cause No. 1555 in the District Court of the United States for the Eastern District of Tennessee, Northern Division.

That Sidney Davis and W. B. Lewallen are attorneys at law in the Town of Clinton, Tennessee, and that they were employed by the defendants in Cause No. 1555 in the District Court of the United States for the Eastern Dis-

trict of Tennessee, Northern Division, to resist the efforts of Negro children entering Clinton High School in Anderson County, Tennessee. That as said attorneys and as citizens of Tennessee and the United States, they request permission of the Court to be petitioners in this cause.

That Walter E. Fischer is an attorney in the Town of Clinton, Tennessee, and that he is a citizen and resident of Anderson County, Tennessee, and of the United States and that he is an Assistant Attorney General for the Nineteenth Judical Circuit of the State of Tennessee, and that he is interested in maintaining respect for the laws of Tennessee and the United States and respect for the District Court and the Supreme Court of the United States, and he requests permission to be allowed to be a petitioner in this cause.

II

That in this cause the Judge of this Honorable Court handed down an opinion in which the Court said, "It is the opinion of this Court that desegregation as to high school students in that county should be effected by a definite date and that a reasonable date should be fixed as one not later than the beginning of the fall term of the present year of 1956." Said opinion was filed on January 4, 1956, and the petitioners, D. J. Brittain, Jr., and J. M. Burkhart, were apprised of that fact, and in compliance with the opinion of this Honorable Court, Clinton High School was integrated at the fall term of 1956.

That during the spring of 1956, the petitioner, D. J. Brittain, Jr., in attempting to comply with the orders of this Honorable Court registered several Negro students for entry in the Clinton High School at the fall term 1956. On August 22, 1956, the student body of Clinton High School in Anderson County, Tennessee, reported to the high school and there received their schedule and other instructions pertaining to school administration during the school term of 1956-57. Regular class sessions at Clinton High

School began August 27, 1956, and that in accordance with the orders of the United States District Court for the Eastern District of Tennessee, Northern Division, Negro students were admitted and have attended Clinton High School and are now attending Clinton High School.

III.

That on August 25, 1956, a man by the name of John Kasper, who claims to be the Executive Secretary of the White Seaboard Council of the White Citizens Council, came to Clinton, Tennessee, and brought with him a quantity of scurrilous literature or pamphlets which attack the integrity of the Supreme Court of the United States and federal courts in general. The said John Kasper met with certain radical elements of Anderson County, Tennessee, and began the organization of a movement to prevent the defendants in this cause and the petitioners along with other responsible citizens of Clinton, Tennessee, and Anderson County, Tennessee, from obeying the orders of this Honorable Court. That the said John Kasper has stated that his sole purpose of coming to Clinton, Tennessee, was to prevent the integration of the races at Clinton High School and that he had full knowledge of the orders of this Honorable Court to integrate said high school by the fall term 1956, and that he advocates and advises his radical following to ignore the orders of this Honorable Court and to do all that they can to impede, obstruct, and intimidate the principal of Clinton High School and the County School Board of Anderson County, Tennessee, from carrying out the orders of this Honorable Court in the matter. That the said John Kasper made arrangements for the painting of signs to be used by pickets at Clinton High School, and that on Monday, August 27, 1956, there were picket lines in front of Clinton High School in Anderson County, Tennessee. That on Tuesday, August 28th, and Wednesday, August

29th, there continued to be a large crowd congregating near Clinton High School, and particularly near the entrance to the school, and that on August 29th, 1956, the crowds became so large and threatening that several Negro Students were afraid to come to school and in at least one instance, a Negro child became so fearful that her parents came and removed her from the school. That the parents of some of the Negro children and also some of the white children have received threatening anonymous telephone calls because said parents were allowing their children to attend the same school. That John Kasper has been leading the movement and is leading the movement to intimidate the parents from sending their children to Clinton High School both in the Negro race and in the White race. That on August 28, 1956, the crowd of people, agitated by the propaganda of John Kasper, have actually attacked at least one Negro child. The said John Kasper has stated and is still stating to his radical following that the United States District Court for the Eastern District of Tennessee, Northern Division, had no authority to order integration of the races at Clinton High School and that that order should not be obeyed.

The petitioners allege that Tom Carter, Max Stiles, Ted Hankins, Leo Bolton, and Mabel Currier, all of whom are citizens and residents of Anderson County, Tennessee, are the most radical followers of the said John Kasper, and that they are part of the crowd of some one hundred sixty-three persons congregated in and about Clinton High School. The petitioners allege that all of the above citizens named are actively advising the said crowd of people congregated around Clinton High School to ignore the orders of this Honorable Court and to do all they possibly can to impede the carrying out of said orders by the petitioners D. J. Brittain, Jr., J. M. Burkhart, and the other defendants named in Cause No. 1555 in the District Court of the United States for the Eastern District of Tennessee, Northern Division. All of the above named persons,

namely John Kasper, Tom Carter, Max Stiles, Ted Hankins, Leo Bolton, and Mabel Currier have stated that it is their avowed purpose to close down Clinton High School and to prevent students both white and colored from attending the high school so long as the defendants in Cause No. 1555 in the United States District Court for the Eastern District of Tennessee, Northern Division, allow integration of the races at Clinton High School in Anderson County, Tennessee, in accordance with the orders of this Honorable Court and in accordance with the decision of the Supreme Court of the United States.

The petitioners allege that they have been unable to obtain the names of all of the people congregating about Clinton High School and urging disregard of the orders of this Honorable Court and who are actively attempting to prevent the petitioners from carrying out the orders of this Honorable Court, but they allege that not only John Kasper, Tom Carter, Max Stiles, Ted Hankins, Leo Bolton, and Mabel Currier should be enjoined from congregating about Clinton High School in Anderson County, Tennessee, and from encouraging the people of Anderson County, Tennessee, to ignore the orders of this Honorable Court and from attempting to intimidate the students of Clinton High School, both white and colored, but that all persons who are participating with them in this enterprise and who might participate in the future in said unlawful enterprise should be so enjoined.

The petitioners file this petition under the provision of Title 18, Section 401, of the Federal Code, which reads as follows:

> "Section 401. Power of Court.—A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none others, as—
>
> (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

The petitioners allege that John Kasper, Tom Carter, Max Stiles, Ted Hankins, Leo Bolton, and Mabel Currier had knowledge that this Honorable Court had issued an order to petitioners to integrate Clinton High School by the fall ferm 1956, and that by their actions in attempting to prevent, impede, and obstruct the carrying out of the orders of this Honorable Coitrt and their contemptuous attitude toward the Courts of the United States and its orders in regard to the integration of the races amounts to a contempt of this Honorable Court. The Petitioners allege that the foregoing named persons, and especially John Kasper, should be immediately attached by this Honorable Court and brought before it to show cause why the Court should not fine or imprison him, or both, for his contemptuous conduct.

The petitioners allege that John Kasper, Tom Carter, Max Stiles, Ted Hankins, Leo Bolton, and Mabel Currier and other persons who join them in their contemptuous attitude toward the orders of this Honorable Court will continue to attempt to prevent and impede the petitioners from carrying out the orders of this Honorable Court in regard to integration of the races at Clinton High School unless they are enjoined from congregating around Clinton High School and from threatening the parents of both white and Negro children who allow their children to attend Clinton High School and from doing any act which would obstruct or impede the integration of Clinton High School in Anderson County, Tennessee, in accordance with the orders of this Honorable Court and the opinion of the Supreme Court of the United States of America.

IV

The Premises Considered, the petitioners pray:

1. That the petitioners W. B. Lewallen, Sidney Davis, and Walter Fischer be allowed to join D. J. Brittain, Jr., and J. M. Burkhart as petitioners in this cause.

2. That this petition be filed and that proper notice of same be given John Kasper, Tom Carter, Max Stiles, Ted Hankins, Leo Bolton, and Mabel Currier, and any and all persons who join with John Kasper, Tom Carter, Max Sitles, Ted Hankins, Leo Bolton, and Mabel Currier in an attempt to obstruct or impede the carrying out of the orders of this Honorable Court in regard to integration at Clinton High School in Anderson County, Tennessee.

3. That an injunction issue enjoining John Kasper, Tom Carter, Max Sitles, Ted Hankins, Leo Bolton, Mabel Currier, and any and all persons who might join with said persons in obstructing or impeding the carrying out of the orders of this Honorable Court to integrate the races at Clinton High School in Anderson County, Tennessee, and further enjoining said persons from doing any act to obstruct or impede by intimidation or oppression or by the gathering in large groups in and about Clinton High School in Anderson County, Tennessee, to prevent petitioners from carrying out the orders to integrate the races at Clinton High School in Anderson County, Tennessee, as indicated in an opinion by this Honorable Court filed January 4, 1956.

4. That the Court issue an attachment for the body of John Kasper, Tom Carter, Max Stiles, Ted Hankins, Leo Bolton, and Mabel Currier, requiring said persons to appear before the Court and show cause why they should not be held in contempt of the orders of this Honorable Court and fined or imprisoned, or both, for their contemptuous conduct as set out in this petition, and that said persons be required to make bond for their appearance before your Honor.

5. That at the hearing of this cause, an injunction issue permanently restraining John Kasper, Tom Carter, Max Stiles, Ted Hankins, Leo Bolton, Mabel Currier, and any other persons from congregating in front of Clinton

High School for the purpose of obstructing or impeding the petitioners from integrating the races at Clinton High School in Anderson County, Tennessee, in accordance with the orders of this Honorable Court and the decision of the United States Supreme Court.

6. That petitioners have such other and further relief, including general relief, as Your Honor deems them entitled to.

This is the first application for extraordinary process in this cause.

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(Filed August 29, 1956)

**Temporary Restraining Order**

In this cause it appearing from sworn petition of D. J. Brittain, Jr., J. M. Burkhart, W. B. Lewallen, Sidney Davis and Walter E. Fischer that John Kasper, Tom Carter, Max Stiles, Ted Hankins, Leo Bolton and Mabel Currier and others whose names are not known by the petitioners at this time, are hindering, obstructing, and interfering with the carrying out of a memorandum order issued by this Court on January 4, 1956, in that among other things, they have requested and urged the principal of the Clinton High School and the members of the County School Board of Anderson County to refuse to carry out the aforesaid integration order of the Court; that they have formed and caused to be formed picket lines in front of Clinton High School of Anderson County and on August 28 and 29, 1956, caused a large crowd to form near the entrance to Clinton High School, and threatened and caused to be threatened several of the Negro students attending said high school, causing them in at least one instance to become afraid to attend school, and causing the parents of the students to become frightened and alarmed, one of whom caused a child to be removed from school; that anonymous letters

have been written to parents of the students threatening them for permitting their children to attend school; that John Kasper has been one of the leaders in what appears to be a concerted movement to intimidate the parents, or some of them, who are sending their children to school, in an effort to prevent a continuation of school attendance; that on August 27, 1956, a crowd of people agitated by John Kasper attacked one of the Negro children of the school; that Kasper stated on various occasions that the Court had no authority to issue the aforesaid order of desegregation in the Clinton High School, and that it should not be obeyed.

It further appearing to the Court that the unlawful conduct of Kasper and the other named parties herein will continue unless a restraining order is issued prohibiting such acts, words, and conduct, and that if continued complainants will suffer immediate and irreparable injury, in that the Clinton High School will not continue to operate in an orderly manner and some of its students may suffer physical harm;

It is ordered and decreed by the Court that the aforementioned persons, their agents, servants, representatives, attorneys, and all other persons who are acting or may act in concert with them be and they hereby are enjoined and prohibited from further hindering, obstructing, or in any wise interfering with the carrying out of the aforesaid order of this Court, or from picketing Clinton High School, either by words or acts or otherwise.

It is further ordered that the aforementioned parties appear before this Court in the Federal Court House, Knoxville, Tennessee, at 1:00 o'clock p. m. on Thursday, August 30, 1956 and show cause why a preliminary injunction should not be issued.

This temporary restraining order is granted without notice to Kasper, Carter, Stiles, Hankins, Bolton, and Mabel Currier because of the matters hereinbefore set out and other matters of like tenor set forth in the complaint.

and because it has been made to appear to the Court that immediate action is necessary to prevent possible harm to the students of Clinton High School.

August 29, 1956.

ROBT. L. TAYLOR
*Judge*

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(Filed August 30, 1956)

**Petition for Contempt**

The petitioners, D. J. Brittain, Jr., J. M. Burkhart, Sidney Davis, W. Buford Lewallen, and Walter E. Fischer being the same petitioners in the intervening petition filed in this cause on the 29th day of August, 1956, respectfully show unto Your Honor:

I

That pursuant to the restraining order issued by Your Honor on the 29th day of August, 1956, at 6:07 p.m. at Your Honor's offices and chambers in the Federal Court House Building in Knoxville, Tennessee, the defendant, John Kasper, one of the defendants named in said restraining order, was duly served with said restraining order by the United States Marshall while the defendant was on the Court House steps or within the Court House building within the Town of Clinton, Tennessee, at approximately 7:45 p.m. on the 29th day of August, 1956.

II

Immediately upon receiving the aforesaid restraining order from the Marshall of the United States District Court, the said defendant, John Kasper, immediately stepped outside of the Court House door in the Town of Clinton, Tennessee, where a large crowd of approximately eight hundred to one thousand people had gathered as per

prearrangements made by the defendant, John Kasper, and announced by him during the preceding hours of the day, and the said John Kasper began to address the crowd. The defendant looked at the restraining order in front of the crowd while standing on the Court House steps and said, "I have just been served with an injunction from the Federal Court." "We will now find out who our enemies are." He then proceeded to read the names of the petitioners. He called out the name of the petitioner, D. J. Brittain, Jr. He then called out to the crowd assembled, "He is our enemy." "We must get him." "I will not allow your children to be deprived of an education because a weak-kneed man like Brittain refuses to push those niggers out of school." While addressing the crowd, the defendant, John Kasper, further stated, "I will stay here until those niggers are out of Clinton High School." The petitioners further allege and show to the Court that the defendant Kasper then proceeded to tell his audience that those persons not specifically named in the restraining order could go ahead with their activities over at the Clinton High School. He further stated that the Federal Courts could serve all sorts of restraining orders on them, but that they did not have to obey said restraining orders unless they wanted to.

III

Petitioners further show to the Court that the defendant Kasper, on the morning of August 30th at approximately eight o'clock a.m., appeared in front of the high school grounds in the Town of Clinton, Tennessee, remaining some two hundred feet away from the main entrance door of said high school and standing apart from the large gathering or group of persons gathered there, proceeded to stop individuals walking up and down the street and converse with them in the general locality where large groups were gathered. The petitioners allege and show to the Court that the defendant Kasper's presence was de-

signed, on this occasion, to further violate the orders of this Honorable Court. The petitioners aver that all of the above acts and conduct on the part of the defendant Kasper were in direct violation of the orders of this Honorable Court; and that his conduct was in willful disregard of the order of this Court; and that the said defendant, John Kasper, is guilty of a criminal contempt of Your Honor's Court, under Title 18, Section 401, Subsection 3, of the United States Code Annotated.

The petitioners therefore pray that Your Honor issue an order of arrest for the person of John Kasper for criminal contempt of the orders of this Honorable Court, and that he be brought before Your Honor instanter to answer for his aforesaid contempt in accordance with law.

The petitioners further pray that they be allowed to file this petition for contempt against the defendant, John Kasper, along with any accompanying affidavits attached thereto.

WALTER B. FISCHER
W. B. LEWALLEN
SIDNEY DAVIS
D. J. BRITTAIN, JR.

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(Filed August 30, 1956)

**Affidavit of James Loggans**

STATE OF TENNESSEE }
COUNTY OF ANDERSON }

JAMES LOGGANS, being duly sworn before the undersigned authority, makes oath as follows:

That he is thirty-six years of age and is a citizen and resident of Knox County, Tennessee. That he is the news editor of The Clinton Courier-News, located in the Town of Clinton, Tennessee. That he has been on the scene during most of the daylight and part of the night hours

since the opening of the Clinton High School on August 27th up until the time of the making of this affidavit on this the 30th day of August 1956 at 9:30 a.m. That on August 28th, in the Court House in Clinton, Tennessee, the affiant interviewed the defendant John Kasper, and the defendant John Kasper told the affiant that he "would stay right here until the Principal, D. J. Brittain, and the School Board resigns if necessary." Affiant further states that the defendant Kasper further told him on this occasion that he planned to remain here, help the fellows on the picket line, keep on organizing and distributing legal literature, and planned to have a rally here tonight or tomorrow. The affiant further makes oath that the defendant Kasper's attorney inserted the words "legal literature." Affiant further makes oath that the defendant Kasper told him his age was twenty-six and that his birthplace was Camden, New Jersey. Affiant further makes oath that the defendant Kasper told him that he organized this White Citizens Council on June 5, 1956.

Affiant further makes oath that he was present at the Court House in the Town of Clinton, Tennessee, on August 29th at approximately 7:45 p.m., when the United States Marshall served an injunction on the defendant, John Kasper. Affiant further stated that the defendant came out on the steps of the Court House and announced to the crowd that an injunction had been served on him, held it up before the crowd and stated that he would have something to say about it later on. That the defendant then started on various harangues concerning the Constitution, Negroes, or "niggers", and others. The defendant further stated that the people could go ahead and continue their activities here as they did Monday, Tuesday, and Wednesday if these persons are not specifically named in this order. The defendant further stated, "I may not participate in these activities further, but I will remain here." The defendant then further made personal attacks upon the petitioners in the petition as named and

said, "I will not allow these children to be deprived of an education because Brittain refuses to push those 'niggers' out of school." Kasper further stated, "I will stay here until those niggers are out of Clinton High School." During the defendant's tirade, he further stated, "The Federal Court can file every kind of injunction and enjoin you, but as long as that school is there, and so forth, no injunction can force you to do something you don't want to do." Affiant further states that the defendant then criticized the Knoxville News Sentinel, the Knoxville newspaper, and the Clinton Courier-News, and Mr. Wells, the publisher of the Clinton Courier-News personally. Affiant further states that the defendant said "I will stay here until those niggers are out of Clinton High School." Affiant further states that Kasper stated that he urged or asked the audience to join him in his council "to fight negroism." Affiant further states that the defendant Kasper then talked about the injunctive order which had been served upon him, and invited them to come to Knoxville to the hearing. That later on the defendant Kasper, however, told the audience that it is far more important for you to be here "two blocks away". Affiant further states that Kasper then stated that the "big shots will be little shots before this thing is over." Kasper further stated; "We will carry the fight on until we win, tomorrow night and every night until this is over we will be right here."

Further the affiant sayeth not.

JAMES LOGGANS
James Loggans.

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(Filed August 20, 1956)

**Order for Attachment**

It appearing to the Court from a sworn petition for contempt by petitioners D. J. Brittain, Jr., et al. that a

temporary restraining order was issued by the Court at 6:07 p.m., August 29, 1956, restraining John Kasper, Tom Carter, Max Stiles, Ted Hankins, Leo Bolton and Mabel Currier, and all other persons who are acting, or may act, in concert with them, from impeding, hindering, obstructing, or in any wise interfering with the carrying out of an order issued by this Court on January 4, 1956, directing the school athorities of Anderson County, Tennessee, to discontinue segregation practices in the Clinton High School, and that soon after said order was served by the United States Marshal for the Eastern District of Tennessee on John Kasper, that the said John Kasper addressed a large crowd of people in Clinton in which he said to them in substance as follows: "... now we shall find out who our enemies are." He read the names of the petitioners. He called on the name of D. J. Brittain. He called out "He is our enemy. We must get him. I will not allowed these children to be deprived of an education because Brittain (Brittain is the principal of the Clinton High School and one of the petitioners herein) refuses to push those niggers out of school. . . ., I will stay here until those niggers are out of the Clinton High School. . . . those people not specifically named in the restraining order, could go ahead with their activities over at the Clinton High School if they were not specifically named in the order."

It further appears from the averments of the petition and affidavit that John Kasper at the aforesaid time and place wilfully disregarded the order of this Court and committed criminal contempt of this Court as defined by Title 18, Sec. 401, sub-sec. 3 of the U. S. Code, Annotated.

It is ordered that a writ of attachment be forthwith issued commanding the Marshal of this Court and his deputies to attach said John Kasper and have his body before this Court in the United States Courthouse at Knoxville, Tennessee, forthwith, to stand trial upon the charge of criminal contempt set out in this order and to show cause

why he should not be punished therefor and that a copy of this order be served upon the said John Kasper at the time he is apprehended.

That the Clerk of this Court will transmit to the Marshal an original and attested copy of said attachment and two attested copies of this order dated August 30, 1956.

ROBERT TAYLOR
*United States District Judge*

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**Minutes: August 30, 1956**

No. 1555 Civil

JOHEATHER McSWAIN, ET AL

v.

COUNTY BOARD OF EDUCATION OF ANDERSON COUNTY, TENNESSEE, ET AL

Came the parties by their attorneys, and this cause coming on for hearing upon petition of D. J. Brittain, Jr., Principal of Clinton High School, et al and temporary restraining order, and order to show cause served on John Kasper, and petitioner's proof having been heard, and at the close of same respondent, John Kasper, made motion to quash the restraining order, which motion was overruled. It was agreed in open Court that proof on the attachment for John Kasper be heard along with the proof on the injunction. Thereupon, respondent's proof was heard in part, and the respondent, John Kasper, was placed in custody of the United States Marshal with bond fixed at $10,000.00. Thereupon, the hour of adjournment having arrived, Court was adjourned until Friday morning, August 31, 1956, at 9:00 A.M.

**Minutes: Friday, August 31, 1956**

Court Met Pursuant to Adjournment
Present and Presiding
THE HONORABLE ROBERT L. TAYLOR, *Judge*, etc.

No. 1535 Civil

JOHEATHER MCSWAIN, ET AL

v.

COUNTY BOARD OF EDUCATION OF ANDERSON COUNTY, TENNESSEE, ET AL

Came the parties by their attorneys, and this cause coming on for further hearing, the respondent's proof was heard, petitioner's rebuttal proof was heard, respondent's rebuttal proof was heard, and argument of counsel, and the Court having fully considered the case, announced findings of the Court as follows:

It is the judgment of this Court, and the Court concludes from the proof in this case, that the restraining order was properly issued, and it is the further judgment of this Court, and the Court so holds, that the temporary restraining order be continued in effect in the form of a preliminary injunction until September 6, 1956, at 1:00 o'clock P.M., at which time the Court will hear all parties on the question of making the preliminary injunction permanent.

The Court further finds on the contempt charge against John Kasper, that John Kasper is GUILTY of contempt of this Court as defined by Title 18, Section 401, Sub-Section 3 of the United States Code annotated.

*Judgment and Commitment*

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF TENNESSEE, NORTHERN DIVISION

No. 1555 Civil

IN THE MATTER OF:

JOHN KASPER,

Contempt Proceedings.

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**Judgment and Commitment**

On this 31st day of August, 1956, came the attorney for the petitioners, D. J. Brittain, Jr., J. M. Burkhart, Sidney Davis, W. Buford Lewallen, and Walter E. Fischer, and the defendant, John Kasper, appeared in proper person and by attorney

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a finding of guilty, of the offense of wilfully violating the provisions of the temporary restraining order issued by this Court at 6:07 P. M. on August 29, 1956 as charged in the writ of attachment, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged of criminal contempt of this Court.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ONE (1) YEAR from and after this date.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Mar-

shal or other qualified officer and that the copy serve as the commitment of the defendant.

ROBERT TAYLOR,
*United States District Judge.*

BYRON POPE,
*Clerk.*

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Filed Sept. 6, 1956

**Motion for a New Trial**

Comes now the respondent John Kasper by his counsel and moves the Court to award said respondent a new trial respecting the Petition for a temporary restraining order; the temporary restraining order; the order for attachment and judgment of conviction for contempt for the following reasons:

1. The findings of the Court were contrary to the weight of the evidence.

2. The findings of the Court were contrary to law.

3. That the proceeding with respect to the Order for Attachment constituted a denial of due process of law.

4. And for such other and further reasons as may be advanced at the time of hearing.

J. BENJAMIN SIMMONS
J. Benjamin Simmons
901 - 16th Street, N. W.
Washington 6, D. C.

**Opinion of the Court on Temporary Restraining Order Issued August 29, 1956, at 6:07 P.M. and Order to Show Cause**

August 31, 1956.

DECISION

THE COURT: This matter is before the Court on account of continuing a temporary restraining order issued at 6:07 p.m. on the 29th day of this month, enjoining Frederick J. Kasper and four or five other citizens from impeding, obstructing, and interfering with the members of the Board of Education of Anderson County from carrying out an order made by this Court on January 4, 1956.

The second question for consideration is on the attachment order issued on August 30, 1956, directing the United States Marshal to attach the body of respondent Kasper and bring him forthwith before the Court to stand trial upon the charge of criminal contempt set out in the aforementioned order, and why he should not be punished therefor.

At the time the temporary restraining order was issued, notice was given to the defendants to appear in this Court at Knoxville at 1:00 o'clock p. m. on yesterday, the 30th day of August, to show cause why this preliminary restraining order should not be converted into a preliminary injunction so as to enjoin the resporadent and all others who may be acting in concert with them, if any, from interfering with the school authorities of Clinton High School in carrying out the aforementioned order of January 4, 1956.

Respondents appeared yesterday in person and by counsel; that is to say, the respondents who were served in person, and there were three of them, as the Court understands also appearing by competent counsel, two of whom live and practice their profession in this area, and another in Washington, in the District of Columbia.

Counsel for the respondent at the outset asked that the motion for preliminary injunction be passed to a later

date, which for good reason in the opinion of this Court, was denied. Thereupon, motion was made to pass the contempt phase of the lawsuit to a later date, and counsel was advised in detail that the respondent Kasper would be given time to answer the charges against him in writing, if he so desired, and be given further time, if he desired, to prepare his defense.

Counsel at first indicated that he wanted a hearing on the action delayed, to which the Court readily acceded.

In the course of the trial, counsel announced that it was his preference and the preference of Kasper to try the contempt proceeding along with the motion for preliminary injunction; and without objection by these petitioners, the Court agreed. Accordingly, proof has been introduced during this proceeding on yesterday and today relative to these two questions, namely, shall the Court vacate the temporary restraining order, or shall he continue it in effect in the form of a preliminary injunction?

Second, did the respondent Kasper wilfully violate the order issued on August 29, 1956?

At the outset, a word should be said about the history of this litigation, which will be more or less a repetition, in view of the statements of counsel made in response to questions by the Court during the trial.

As indicated, the order of January 4, 1956, directed the school authorities of Anderson County to carry out the program of integration within the framework laid down by the Supreme Court of the United States in what has been referred to throughout this litigation as the Brown case, in 1954.

In that connection, without referring too much to the aforementioned order of this Court, it said:

> "It is the duty of this Court to comply with the clear mandate of the Supreme Court. The holding Court, as applied to this case, requires adoption by school authorities of Anderson County of a program

of integration that will expeditiously permit the enrollment of negroes of high school grade to the high school of that county. The Supreme Court said, in substance, that the school authorities should make a 'prompt and reasonable effort toward that objective'.

"The record here indicates that the Anderson County school authorities have had this problem under consideration from time to time, apparently in good faith, but have as yet taken no positive action in the way of discontinuing segregation.

"It is the opinion of this Court that desegregation as to high school students in that county should be effected by a definite date and that reasonable date should be fixed as one not later than the beginning of the fall term of the present year of 1956."

Following that order, as appears from the proof in this case, the school authorities, to their credit, in good faith authorized the enrollment of colored students in the Clinton High Schools of Anderson County. The proof shows that approximately 15 colored students enrolled in that school out of a number of some 750 to 850 students, and 12 of whom have been attending school at that school since the beginning of this school year, with the possible exception of some interruptions caused by the activities of Kasper and others.

This record shows that Kasper came into the area of the school last Saturday, or around August 25th. Up to that time, the school had been getting along reasonably well with, I assume, people holding various and different opinions about whether negro children should attend with white children, but that was not the question and is not the question in this suit, for the reason that the highest judicial authority under this government has said they had and have the right to attend that high school.

The proof is that Kasper talked to various people

about the negroes attending school, that he made speeches, beginning on Monday, August 27th, and continuing through Tuesday, August 28th, the effect of which was to urge the school officials of Anderson County, particularly the officials of Clinton High School, and more particularly, Mr. Brittain, to refrain from complying with the order of this Court which was issued in compliance with an order of the Appellate Court of this Circuit, namely, the Sixth Circuit, issuing their order in compliance with the holdings of the Supreme Court of the United States.

The activities of Kasper continued and became so pronounced that Mr. Brittain and others filed a petition with this Court on August 29th, charging that this Court's order was being violated in that respect set out in that petition.

The petition was presented to the Court in Chambers, and after consideration, the order of August 29th which has been referred to as the preliminary restraining order, was issued.

What has been said is sufficient to show that the order of this Court was not only being violated but was being violated and was being ignored, and continued to be violated up until the very minute the order was issued, namely, seven minutes after six o'clock p. m., on the indicated date.

It is the judgment of this Court, and the Court concludes from the proof in this case, that the order was properly issued, and it is the further judgment of this Court, and the Court so holds, that it shall be continued in effect in the form of a preliminary injunction until September 6, 1956, at 1:00 o'clock p. m., at which time the Court will hear all parties on the question of making the preliminary injunction permanent.

This brings us to the second phase of the lawsuit, which relates to the attachment writ issued on August 30, 1956. The proof shows that this preliminary injunction writ was served on Kasper while he was making his speech near or in front of the court house in Clinton on August

29, 1956, between 7 and 8 o'clock p. m.—as the Court recalls, around 7:45 was the exact hour.

Kasper, through his counsel, says he is not guilty of the charge of criminal contempt, first, because the Court is without jurisdiction to issue the preliminary writ, and that the attachment writ following issuance of the preliminary injunction writ was a nullity.

Counsel, in argument stated politely that this was a novel proceeding insofar as he was possessed of knowledge relating to such matters, and in that connection stated that it was incongruous for the parties who were defendants in the original suit in this Court of McSwain and others, Number 1555 on the docket, should thereafter be permitted by this Court to come in by petition as complainants and complain against Kasper and others. In a word, counsel says that is unknown to the forms of regular and established procedure in the federal court or in other tribunals.

Counsel's argument would be more persuasive in that respect if this were a civil contempt. There is a distinction, althought in some cases a differentiation between civil and criminal contempt is very narrow but, as indicated, there is a well defined distinction between the two. Civil contempt is used ordinarily not to punish any person but to help some other private litigant where another private litigant has done wrong. For example, if a private litigant comes on the yard of his neighbor and that neighbor gets an injunction to put him off and he doesn't get off, the court under those circumstances ordinarily would have the right to order that neighbor, or direct him, to get off the other neighbor's yard or place him in jail until he complied with the court's order. As indicated, that is not punishment; it is an effort to redress a private wrong done to a private citizen. On the other hand, the purpose of the criminal contempt, the kind that is involved in this proceeding, is to protect the public and punish wrong-

doers in order that they may be deterred from doing like things in the future, and in order that those who may have potential thoughts of doing the same things, to prevent them from so doing.

It is criminal contempt we are considering in this case. In criminal contempt it is not necessary for any pleadings to be filed in the Court; it is only necessary for some reputable party or parties to make known to the Court that a prima facie case exists that the Court's order is being violated. Under those circumstances, it is the duty of the Court to order the violators brought before the Court and explain to him in open Court the charges against him and ask him why he should not be punished for the alleged contempt. Of course, that contemplates due process of law. That contemplates giving the accused person time to answer, time to make a defense, and the benefit of all other regulations and standards that go with due process of law in this country.

So that the petitioners in this case are before this Court with the permission of this Court saying that this defendant and others disobeyed the order of this Court, and the Court permitted them, in the nature of officers of the Court, to appear in this proceeding. It is the opinion of this Court that the procedure followed in citing Mr. Kasper to appear here was regular and proper.

Another point is that the order was not violated for the reason that that which Kasper did, he had a right to do under the First Amendment to the Constitution of the United States. It is said he had that right for two reasons: That he did nothing more than to express his views and that under that provision of the Constitution every citizen has a right to express views on all subjects.

Second, it is said that under that Amendment, he had the right to assemble along with these other people, that the right was guaranteed him, and that he was merely exercising that right.

Now, as to the first contention, it is the view of this Court that the First Amendment is not a license or privilege to Kasper or any other citizen to violate an order regularly issued by the Court. It is the further view of this Court that it is not a privilege of Kasper or any other citizen, along with others, to urge that the school authorities refrain from complying with the order of this Court. Freedom of assemblage does not give rights to people to violate orders of the Court issued under regular court procedure.

What has just been said relates to legal defenses which have been made and argued with fervor by counsel for Mr. Kasper.

We come now to the defense on the merits of the lawsuit, and that is that respondent Kasper did not wilfully intentionally violate the order of this Court that was issued on August 29, 1956. That presents a question of fact to be determined by the Court from the evidence that has been adduced from the witness stand during yesterday for the greater part of the afternoon and this morning.

Kasper says he did not know about the lawsuit from which the litigation now under consideration stems; that he simply read in the papers that Clinton High School was permitting negro students to attend that school. In that connection, he said he dedicated his life to the proposition that integration must not and shall not become an accomplished fact in these United States. It is with that brief background that Kasper says that he went to Anderson County. Mr. Kasper has the right, of course, like other citizens, to express his views on subjects, but that is not what this case is about, and Mr. Kasper does not have the right to [illegible]fully violate the order of this Court.

One, among many unusual matters that have appeared from the proof in this case, is that Kasper was dissatisfied with the order of this Court being put into execution, and he told the school authorities, particularly Mr. Brittain. Brittain, like the good citizen he is, told Kasper that he

was simply a law abiding citizen undertaking to comply with the law of the land. That didn't satisfy him. It is the proof in this case that he started a campaign to oust this man Brittain from a position to which he was elected by the duly constituted authorities of Anderson County, which he has performed, so far as this Court knows, with credit. It is unusual for a man from Washington or any other state to come into one of the counties of Tennessee and undertake to put out one or more of the county officials because of their efforts to comply with the law.

This Court observed Brittain on the stand. He has been harrassed in the performance of his duty. He said he received anonymous telephone calls one evening in the early evening and up to around five o'clock in the morning. That is not right. His appearance while on the witness stand was that of a man who was devoted to duty, and so Kasper, and others who are not even before this Court, from the proof in this case, undertook to get Mr. Brittain out because he was doing his duty. That was Kasper's object, stated more than once, and he was going to stay in Anderson County until the negroes were thrown out or put out.

He says he didn't know about this restraining order. The Court is of the opinion that he did. In that connection, Kasper is not an illiterate man; he is an educated man. He holds a degree from one of the great universities of this country. He is a highly educated man. In spite of this preliminary restraining order which the Marshal and his deputies say was read to him, he goes on with his speech before an audience of 1,000 to 1,500 people, telling them, in effect, that this order of this Court is not the law and that if they don't believe in it, they don't have to comply with it; that there was a greater law than the orders of Federal Court, and that was the law of the people. That argument, which the Court is not interested in in this proceeding, if carried to the logical conclusion, simply means that every citizen dissatisfied with an order issued by this

Court—and as indicated here today, half of the people are, because all courts have to decide against one person or the other, and that person who is dissatisfied will say, "That court has no right to do that I will pay no attention to it". If that philosophy were to prevail we would not, as the Court sees it, be governed by law.

Kasper has a point, which is that people's rights, if they are dissatisfied with the law, or a majority of them, they have a perfect right to do everything within their power without trespassing upon the rights of others to get that law repealed, but they are required to do that in an orderly manner.

It is the judgment of the Court, and the Court finds from the proof in this record, that respondent Kasper wilfully disregarded and violated the order of this Court issued on August 29, 1956, and that he is guilty of contempt of this Court as defined by Title 18, Section 401, Sub-Section 3 of the United States Code annotated.

Would you stand up, Mr. Kasper.

* * * * * * * * *

THE COURT: It is the judgment of this Court—

Do you have anything further to say?

DEFENDANT KASPER: No, sir.

THE COURT: It is the judgment of this Court that you be confined to some institution to be designated by the Attorney General of the United States for a period of one year for wilful contempt of this Court. You are in the custody of the United States Marshal.

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Filed Sept. 7, 1956

**Notice of Appeal**

Notice is hereby given that John Kasper, respondent, hereby appeals to the Circuit Court of Appeals for the Sixth Circuit from the final judgment entered in this

action on the 31st of August, 1956, finding him guilty of contempt of Court and sentencing him to one year in prison, and from the order of the Court overruling respondent's motion for a new trial entered September 6, 1956, and from the order of the Court making the preliminary injunction permanent entered September 6, 1956.

Signed:

J. BENJAMIN SIMMONS
J. Benjamin Simmons
*Attorney for Respondent*
901 Sixteenth Street, N.W.
Washington, D. C.

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**Consent Order Extending Time for Filing Record on Appeal**

It appearing to the Court that in view of the additional time required by the Court reporter to write up the transcript of the hearings herein, the time for filing the record on appeal should be extended, and counsel having consented to the entry of this order as evidenced by their respective signatures hereon, it is by the Court this day of October, 1956,

ORDERED, that the time for filing the record on appeal be and the same is hereby extended to and including the 15th day of November, 1956.

/s/ ROBERT L. TAYLOR
*Judge*

**Decision of September 6, 1956**

DECISION

THE COURT: At the outset, the Court commends counsel for the manner in which they have argued matters which are presently before the Court. They have argued these matters in a deliberate, cautious, and considerate manner.

There are three matters before this Court at the present time. First, whether the preliminary injunction, which was issued after a hearing which lasted the greater part of two days, shall be made permanent.

Many witnesses testified in the case. Counsel on each side presented their respective positions well. The Court was of the opinion, and is of the opinion now, that the preliminary injunction was properly issued. The Court at this time reaffirms the findings and conclusions made in a memorandum opinion from the bench at the conclusion of that hearing, namely, August 31, 1956, which consists of more than thirteen typewritten pages.

The proof today shows that the school authorities have been hindered in carrying out the order of this Court referred to in this memorandum opinion, which was made on January 4, 1956.

The injunction prohibits the respondent from interfering with Mr. Brittain and his colleagues in carrying out that order.

Respondents have no legal basis in objecting to that, because that is the order of the Supreme Court of the United States, the highest judicial body in this land. It is the conclusion of the Court, and the Court finds, from the proof in the case that the injunction should be made permanent.

This brings us to the second matter that is before the Court, which is consideration of a motion for a new trial, filed by Mr. Kasper on September 6, 1956.

*Decision of September 6, 1956*

In support of the motion, the following grounds are urged:

First, the findings of the Court were contrary to the weight of the evidence. The Court, in the memorandum opinion which has been mentioned, discussed the evidence which was adduced at the hearing and came to the conclusion that Mr. Kasper wilfully violated the Court order which was referred to in more detail in that memorandum opinion. This Court is still of that opinion. For that reason, ground number one of the motion for a new trial is and must be overruled.

Ground number two is that the findings of the Court were contrary to law. That brings up the legal questions which were discussed in an able manner by Mr. Kasper's attorney during the hearing of August 31st, which has been supplemented by this hearing today.

The Court in the previous hearing undertook to point out the distinction between civil contempt and criminal contempt, and in that connection made it clear that in criminal contempt proceedings the accused must be fully apprised of the charges against him, and after he is so notified of the charges against him he is entitled to a reasonable length of time in which to fully prepare for a trial. That is just another way of saying that the accused, as is every citizen in the land, is entitled to due process of law under our form of government.

In the opinion of this Court, the accused in this case was tried under due process of law, and the Court is of the opinion that ground number two of the motion is not tenable. It is, therefore, overruled.

Ground number three, that the proceedings with respect to the order for attachment constitute a denial of due process of law. What has been said in relation to ground number two is applicable to ground number three, and for that reason it is necessary that the Court overrule ground number three of the motion.

The fourth and final ground of the motion is that for such other and further reasons as may be advanced at the time of the hearing. Now, in that connection, Mr. Simmons has made a very appealing argument here today in behalf of the respondent. His argument indicates a very thorough study of the procedure of law relating to due process. The Court is not able to agree with all of his conclusions. It is the opinion of the Court that the motion for a new trial should be and the same is hereby overruled.

The third matter is the question of bail. Rule 46 of the Federal Rules of Criminal Procedure, Sub-section (b) thereof, provides:

> "If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impractical to secure his presence by citation, the court or commissioner may require him to give bail for his appearance as a witness."

The Federal Rules of Criminal Procedure, Rule 46, Subsection 2 of Section 8, reads:

> "Bail may be allowed pending appeal or certiorari only if it appears that the case involves a substantial question which should be determined by the Appellate Court. Bail may be allowed by the trial judge or by the Appellate Court or by any judge thereof or by the Circuit Court justice. The court or judge or justice allowing bail may at any time revoke the order admitting the defendant to bail."

That rule was amended by the Supreme Court of the United States this year, which amendment, I believe, became effective on the first day of May, 1956. The amendment reads as follows:

"Bail may be allowed pending appeal or certiorari, unless it appears that the appeal is frivolous or taken for delay. Pending appeal to a Court of Appeals, bail may be allowed by the trial judge, by the Court of Appeals, or by any judge thereof or by the Circuit justice, to run until final determination of the proceedings in all courts. Pending appeal or certiorari to the Circuit Court, bail may be allowed by the Court of Appeals or by any judge thereof or by the Circuit Court or by a justice thereof, any court or any judge or justice authorized to grant bail may at any time revoke the order permitting the defendant to bail."

It is to be observed that the amended rule is different from the original rule. Under the original rule—frankly, Mr. Simmons, that is the rule that the Court had in mind at the time this case was tried on August 31st—the trial judge was to certify that there was a substantial legal question involved before he was justified in permitting bail. Now, as you have observed, that rule is changed. The trial judge is not required to certify that there is a substantial question involved in order to permit bail. So, under the rule as amended, the Court permits the accused bail and fixes bail at $10,000.

In that connection, the Court repeats reading of the last sentence of Rule 46, Subsection 2 of Section 8, which is:

"Any court or judge or justice authorized to grant bail may at any time revoke the order admitting the defendant to bail."

I assume that you have given the clerk notice of Mr. Kasper's appeal and you have filed formal notice of his appeal, have you, Mr. Simmons? I am not granting bail unless you will file notice with the clerk.

MR. SIMMONS: I assure you, your Honor, it will be filed.

THE COURT: I can treat it as filed?

MR. SIMMONS: Yes; your Honor. Treat it as my statement that it is going to be filed. As I understand the rules, it is to be filed by 10:30 a.m. after overruling of the motion, and I assure the Court that I intend to file.

THE COURT: All right.

MR. SIMMONS: Thank you, your Honor.